

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

1

1 IN THE SUPERIOR COURT OF TIFT COUNTY
2 STATE OF GEORGIA

3 SHERRI MCBRYER, Individually)
4 and as the surviving spouse of)
5 JAMES AARON MCBRYER, Deceased)
6 and on behalf of Samuel Aaron)
7 McBrayer and Jordan Janice)
8 McBrayer, as the surviving)
9 children of James Aaron)
10 McBrayer, Deceased,)
11)
12 Plaintiff,) CIVIL ACTION FILE
13) NO.: 2019CV347
14 vs.)
15)
16 HON. GENE SCARBROUGH in His)
17 Official Capacity as Sheriff of)
18 Tift County, Georgia,)
19)
20 Defendant.)
21 _____)

22 Videotaped Deposition of
23 MARYANNE GAFFNEY-KRAFT, DO

24 July 15, 2020

25 2:04 p.m.

26 5615 Riggins Mill Road
27 Dry Branch, Georgia 31020

28
29 Susan W. Tarpley, CCR B-1489

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

2

1 APPEARANCES OF COUNSEL:

2 On behalf of the Plaintiff:

3 CRAIG ALAN WEBSTER, Esquire
4 The Webster Firm, PC
5 405 Love Avenue
6 Tifton, Georgia 31794
7 229.388.0082
8 cwebster@twflaw.com

9 On behalf of the Defendant:

10 TERRY E. WILLIAMS, Esquire
11 Williams, Morris & Waymire, LLC
12 4330 South Lee Street
13 Building 400, Suite A
14 Buford, Georgia 30518
15 678.541.0790
16 terry@wmwlaw.com

17 ALSO PRESENT: Sherri McBrayer

18 VIDEOGRAPHER: Tyler Tam

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

3

	INDEX		
		PAGE	
3	MARYANNE GAFFNEY-KRAFT		
4	Examination by Mr. Webster	6	
5	Examination by Mr. Williams	53	
6	Further Examination by Mr. Webster	67	
7			
8	* * *		
9			
10	EXHIBIT INDEX		
11	EXHIBIT	PAGE	
12	Plaintiff's 1	Report	10
13	Plaintiff's 2	Article	41
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

4

1 MR. WEBSTER: This will be the
2 deposition of Dr. Maryanne Gaffney-Kraft,
3 taken by the plaintiffs in this action.
4 This deposition is being taken for purposes
5 of discovery and any other purpose allowed
6 by the Georgia Civil Practice Act, the
7 Georgia Rules of Evidence, and to whatever
8 degree applicable, and possibly the federal
9 rules of procedure and evidence.

10 We noticed this deposition and Doctor
11 -- do you go by Dr. Gaffney-Kraft or just
12 Dr. Kraft?

13 THE WITNESS: You can call me Kraft.
14 That's fine.

15 MR. WEBSTER: Okay.

16 THE WITNESS: Uh-huh.

17 MR. WEBSTER: Dr. Kraft is here under
18 subpoena, as is required by the rules of
19 the Georgia Bureau of Investigation.

20 THE WITNESS: Yes.

21 MR. WEBSTER: All objections, except
22 to the form of the question and
23 responsiveness of the answer, will be
24 reserved. The qualifications of the court
25 reporter and videographer will be waived.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

5

1 And Dr. Kraft, do you choose to read
2 and sign your deposition?

3 THE WITNESS: Yes, please. Uh-huh.

4 MR. WEBSTER: We'll stipulate, of
5 course, that -- as I think the rule allows
6 anyway, that Dr. Kraft can read -- can sign
7 her deposition in front of any notary
8 public instead of having to get with the
9 court reporter herself.

10 THE WITNESS: Yes.

11 MR. WEBSTER: Terry, you want to add
12 anything to that?

13 MR. WILLIAMS: No. That's good.
14 That's agreeable.

15 MR. WEBSTER: Okay.

16 Now we're ready to begin.

17 THE VIDEOGRAPHER: Stand by.

18 We are on the record at 2:04. Today's
19 date is July 15th, 2020. This is the
20 beginning of Disk Number 1 in the
21 deposition of Maryanne Gaffney-Kraft, MD.

22 My name is Tyler Tam, and I'm the
23 videographer. The court reporter is Susan
24 Tarpley.

25 Counsel, please state your appearance,

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
6

1 including who you represent, beginning with
2 the plaintiff's counsel.

3 MR. WEBSTER: I'm Craig Webster; and I
4 represent the plaintiff, Ms. Sherri
5 McBrayer, who is also present in the room
6 today with us.

7 MR. WILLIAMS: I'm Terry Williams; and
8 I represent the defendant, Sheriff Gene
9 Scarbrough.

10 THE VIDEOGRAPHER: Will the court
11 reporter please swear in the witness.

12 (Witness sworn.)

13 MARYANNE GAFFNEY-KRAFT,
14 having been first duly sworn, was examined and
15 testified as follows:

16 EXAMINATION

17 BY MR. WEBSTER:

18 Q. Tell us your full name, please.

19 A. Yes. My name is Dr. Maryanne
20 Gaffney-Kraft.

21 Q. All right.

22 Dr. Kraft, where do you currently work?

23 A. I work for the Georgia Bureau of
24 Investigation. I'm a central regional medical
25 examiner for the state of Georgia.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

7

1 Q. Okay.

2 How long have you been with the Georgia
3 Bureau of Investigation in this capacity?

4 A. Yeah. Since two thousand -- November
5 2009.

6 Q. Okay.

7 Would you give us your educational and
8 experience background in becoming a medical
9 examiner.

10 A. Yes. As a medical examiner, I am a medical
11 doctor. I've had four years of premedical training,
12 majoring in biochemistry, at Temple University,
13 Philadelphia, Pennsylvania; four years of medical
14 school at the Philadelphia College of Osteopathic
15 Medicine; one year of medical internship at the
16 William Beaumont Army Medical Center, El Paso,
17 Texas; four years of anatomical and clinical
18 pathology training, Scott & White Hospital, Temple,
19 Texas, Texas A&M; my first year of forensic training
20 at the Wake Forest Baptist Medical Center in
21 Winston-salem, North Carolina; and then a second
22 year of forensic training at the University of
23 Chapel Hill, North Carolina.

24 I am licensed to practice medicine in the
25 state of Georgia. I am licensed as a board

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
8

1 certified pathologist in anatomical pathology,
2 clinical pathology and forensic pathology. I've
3 actually started my forensic pathology course back
4 in 2001 in North Carolina. I was there from 2001 to
5 2009 when I came to Georgia in 2009.

6 Q. All right.

7 And you've been licensed in the state of
8 Georgia consistently since 2009?

9 A. That is correct.

10 Q. Okay.

11 Why don't you begin by telling us what a
12 medical examiner does.

13 A. Yes. A medical examiner is the -- is the
14 -- is the everyday term for a forensic pathologist.
15 As a forensic pathologist, I am board certified as a
16 medical doctor to determine cause and manner of
17 death.

18 A cause of death is why somebody dies when
19 they die, exactly when they die. And then the
20 manner of death comes into play, the circumstances
21 surrounding their death.

22 In Georgia we have five different manners.
23 You have natural, accident, suicide, homicide or
24 undetermined.

25 I perform autopsies. During an autopsy I

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

9

1 will start with an external examination, the seeing
2 and documenting any clothing they have, any personal
3 belongings, any medical intervention that they used
4 to try to save their life, go on to characteristics,
5 height, weight, hair color, eye color, things of
6 that sort, body habitus, move on to an evidence of
7 injury section where every injury the decedent has,
8 something simple like a scratch that I call an
9 abrasion or something major like a gunshot wound or
10 something of that sort, will be documented, it will
11 be photographed and measured. And then I will go on
12 to the internal part of the examination.

13 During the internal part of examination,
14 the body is dissected, the body is opened and the
15 organs are removed. If I see an external injury,
16 something like a bruise or a scratch or something of
17 that sort, I'm going to see, during my internal part
18 of examination, how the internal or -- internal
19 organs of the body are affected from that injury.
20 I'm also going to look for any natural disease,
21 heart disease, cancers, things of that sort.

22 I will also draw toxicology samples.
23 Standard tox is blood and urine from the decedent.
24 And then we will submit them as needed for --
25 depending on the case circumstances.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

10

1 Once that is finished I will actually put
2 an autopsy report out documenting all my findings,
3 also toxicology results or any other results that I
4 needed to receive. Sometimes I'll do vitreous,
5 which is a fluid in the eye, to check for
6 electrolytes testing. And then I will determine
7 what the cause and manner of death is.

8 Q. All right.

9 Did you, in fact, perform an autopsy on a
10 man named James Aaron McBrayer on about 4/25/2019?

11 A. Yes, I did.

12 (Whereupon, Plaintiff's Exhibit 1 was
13 marked for identification.)

14 MR. WEBSTER: All right. Let me show
15 you what we've marked Exhibit Kraft Number
16 1.

17 Terry, I've got you a copy here.

18 MR. WILLIAMS: I've got two.

19 MR. WEBSTER: Okay. That's fine.

20 MR. WILLIAMS: Yeah.

21 BY MR. WEBSTER:

22 Q. Take a look at that, Doctor, if you will,
23 and tell us, is that your report of that autopsy on
24 Mr. McBrayer?

25 And when I say report, I'm not including

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

11

1 the toxicology results other than what you referred
2 to in your report.

3 A. That is correct, yes. This is the official
4 report of my autopsy.

5 Q. Okay.

6 Dr. Kraft, let me ask you this question.

7 Having performed the autopsy on Mr. McBrayer on
8 April 25th, 2019, did you determine a cause of death
9 for Mr. McBrayer?

10 A. Yes, I did.

11 Q. And would you tell us what that cause of
12 death was.

13 A. Yes.

14 The cause of death of Mr. McBrayer was
15 excited delirium in conjunction with physical
16 altercation, including (pronunciation) -- including
17 taser use and cocaine and mitragynine
18 (pronunciation) -- mitragynine toxicity.

19 Q. All right.

20 And did you classify this death?

21 A. Yes, I did.

22 Q. And would you tell us in what category you
23 classified this death.

24 A. This was classified as a homicide.

25 Q. All right.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

12

1 What do you mean by the term homicide?

2 A. A homicide is a death that occurs either
3 partially or fully secondary to the action of
4 others.

5 Q. Okay.

6 In this case did you determine whether or
7 not Mr. McBrayer's death was either partially or
8 completely caused by the actions of other people?

9 A. Yes, I did.

10 Q. And which would you say it was, partial
11 or --

12 A. I would say partial.

13 Q. And would you tell us why you -- you
14 characterize it as partial.

15 A. I characterize it as partial because of the
16 autopsy findings. The individual injuries which
17 were found during this autopsy in themselves would
18 not have necessarily caused his death.

19 We have injuries called blunt force
20 injuries, which are things -- when something blunt
21 strikes a body or the body strikes something blunt
22 like a fall or a -- or a hit of something -- you
23 know, somebody hitting somebody. These are blunt
24 force injuries. There are abrasions, contusions,
25 and lacerations, scrapes, tears in the skin or

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

13

1 bruising and then subsequent injuries internally,
2 such as hemorrhages, that you might see in the
3 internal tissues.

4 Mr. McBrayer did have blunt force injuries,
5 but the injuries in themselves were not enough to
6 cause his death.

7 Q. All right.

8 A. Other injuries that were found were
9 entitled under conductive energy weapon injuries,
10 which is classically known as taser. A taser is a
11 -- is a device that is used that puts electrical
12 shock through the body. It is done via either
13 probes that are shot out of a weapon and impale
14 themselves into the skin of the body or by the --
15 the instrument itself, which has two metal probes on
16 it that you can touch a body with.

17 These injuries were seen; but again, those
18 injuries in themselves, when taken with the
19 investigative findings, would not have caused
20 Mr. McBrayer's death.

21 Other findings that I found is natural
22 disease findings, cardiomegaly, which is the other
23 term for enlarged heart. That in itself could cause
24 somebody's death; but again, usually when I see just
25 an enlarged heart, it's going to have to have

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

14

1 something else going on with it.

2 And then in Mr. McBrayer's autopsy I also
3 found drugs in his system. Cocaine was in his
4 system; and mitra- -- mitragynine, which was one I
5 had to actually look up, was in his system. And
6 these drugs actually would have been additive to his
7 cause of death.

8 So them in themselves -- again, them in
9 themselves may have caused his death by themselves,
10 but I have to take -- when I look at a cause of
11 death, I have to look at everything that's occurring
12 of why somebody dies when they die. I can't just
13 pull certain things out.

14 Q. All right.

15 Let's talk about a few of the things that
16 you've just mentioned.

17 Number 1, you mentioned that Mr. McBrayer
18 had a condition known as enlarged heart,
19 cardiomegaly?

20 A. Yes.

21 Q. And had he died from that -- that -- that
22 anatomical or disease process by itself, how would
23 you have classified this death?

24 A. That would be a natural death.

25 Q. Okay.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

15

1 And you also mentioned that the toxicology
2 reports indicated the presence of some drugs, namely
3 cocaine and --

4 A. Met- --

5 Q. I'm going to use the street -- not the
6 street but the marketing name of it, kratom. Is
7 that --

8 A. Yes. That's fine.

9 Q. -- also what you -- okay.

10 A. That's much easier.

11 (Cross-talk.)

12 Q. It's a little easier to say.

13 Which is -- if you had decided that
14 Mr. McBrayer's death was exclusively due to the
15 presence of cocaine and kratom in his blood,
16 how would you have classified that?

17 A. That would have been an accidental death.

18 Q. Okay.

19 In this case you chose not to classify it
20 as either of natural cause or accidental death by
21 reason of what was in his blood. Why in this case
22 did you choose homicide as the classification of
23 this death?

24 A. Homicide was chosen because we do have
25 actions of others -- again, this is part of -- part

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

16

1 of this is through the investigation findings --
2 others, again, resulting in the blunt force
3 injuries -- I can't say all the blunt force injuries
4 occurred secondary to the actions of others, 'cause
5 some of them may have been brought on by himself --
6 but the conductive energy weapon, the taser
7 injuries, also.

8 So if I have injuries or external forces
9 acting on the body, then that brings it into the
10 homicide classification.

11 Q. Okay.

12 And in this case you know for fact -- know
13 from the history given to you that the officers
14 detaining Mr. McBrayer did, in fact, discharge taser
15 weapons, conductive energy weapons?

16 A. Yes.

17 Q. Okay.

18 All right. Let's -- let's shift gears just
19 a little bit and talk about something that we
20 haven't really discussed other than in your
21 inclusion of it in the cause of death description,
22 and that is excited delirium.

23 A. Yes.

24 Q. Would you tell us what excited delirium is.

25 A. Excited delirium is a physiological

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

17

1 response of the body to a struggle. In the classic
2 form of excited delirium, you have a person, a
3 decedent in this case, that prior to death was
4 hyperactive, irrational -- acting irrational, acting
5 just kind of out of their mind; and because of this
6 there is a struggle that ensues secondary to either
7 somebody trying to subdue the decedent to prevent
8 him from hurting himself or others.

9 When the struggle occurs, no matter if it's
10 a physical struggle or anything of that sort -- in
11 this case we have the physical altercation which is
12 both the blunt force injuries, the physical struggle
13 and the electrical taser -- taser use. Because of
14 those -- because of the struggle, because of those
15 happenings, things happen in the body and it's a
16 physiological response.

17 Basically you have release of what --
18 things called catecholamines, which classically are
19 epinephrine and norepinephrine. These are hormones
20 that are released through the adrenal glands and
21 these are the ones we always hear about when you
22 hear of fight or flight that your -- your adrenal
23 glands -- you know, your epinephrine goes up.

24 Epinephrine and norepinephrine have certain
25 effects on the body. They actually are used to

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
18

1 increase the heart rate, to increase the contraction
2 of the heart. So they make the heart contract more
3 efficiently and harder.

4 Secondary to this, you're going to have a
5 blood pressure rise and you're also going to have
6 more demand of oxygen to the heart. So as your
7 heart goes faster, just like if you're exercising,
8 if your heart starts pumping faster and faster,
9 you're going to need more oxygen to keep the heart
10 pumping and you're going to have, you know, a higher
11 blood pressure.

12 Also secondary to the struggle, you have
13 release of potassium from the -- from the muscle
14 cells. Potassium, as you use muscles, you're
15 actually breaking down your muscles. That's what
16 happens when you do physical activity, too. So
17 potassium gets released into the bloodstream.

18 So during a physical struggle, you're going
19 to have epinephrine and norepinephrine increased,
20 which makes the heart contract more, high blood
21 pressure, heart rate up, more oxygen demand of the
22 heart; and the potassium's going to go up.

23 Classically, after -- well, what happens is
24 during the struggle these things are happening. The
25 problem comes in after the struggle. Once the body

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
19

1 is done struggling, two things happen. Your
2 epinephrine and norepinephrine actually continue to
3 go up for a period of time. So they don't just stop
4 being in the bloodstream. They actually increase
5 after the struggle, where your potassium actually
6 decreases after the struggle and drops rapidly.

7 The norepinephrine and epinephrine can be
8 increased for minutes to -- to hours or a couple
9 hours after the physical struggle and the potassium
10 actually can be decreased actually to a level where
11 it's what we call hypokalemia where it's low
12 potassium, subnormal level, for a period of hours,
13 also.

14 Q. Can I interrupt you one second on that.

15 What's the importance of potassium as to
16 what's happening with the heart?

17 A. Because potassium is a -- is a electrolyte
18 which can become a cardio arrhythmogenic, it can
19 cause arrhythmias, irregular heartbeats. Whether
20 it's high or low, it's not good.

21 Q. Okay.

22 A. You need to have it within a certain level.

23 So again, the struggle itself will make it
24 go high and then after the struggle it'll drop low.
25 Low potassium's actually more severe than high

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
20

1 potassium.

2 So you have a struggle that's goes on. No
3 matter what's happening in the struggle, physical
4 altercation, again electrical impulses. After the
5 struggle the person is at rest or -- or being -- you
6 know, meaning that they're not struggling anymore,
7 you have these things going on in the body. The
8 norepinephrine and epinephrine stay high, the
9 catecholamines, the potassium drops low and drops
10 lower than normal.

11 So this is setting the heart up for an area
12 of what they call peril. They actually say
13 post-exercise peril. In this case it would be
14 post-struggle peril, because we have these two
15 physiological things happening in the body. And
16 both of these things -- one is making the heart pump
17 harder, high blood pressure, high heart rate, more
18 oxygen demand, which is going to make the heart
19 stressed more, and then you have the low potassium
20 which is going to make the -- make the heart more
21 irritable and easy to go into an arrhythmia.

22 These two things together, again, would be
23 the excited delirium.

24 Q. Okay.

25 A. Now, if you had added factors to those

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

21

1 excited delirium -- and we do in this case, which is
2 the drugs -- that just potentiates that problem.
3 Cocaine is -- is a drug that is a stimulant. It
4 actually causes the release of catecholamines. So
5 you also -- you have your normal heart, your normal
6 physiological body result or response and then you
7 have the chol- -- the cocaine on top which is even
8 pushing it more to that level.

9 The mitragynine, or kratom, which is the
10 common name for it, is a herbal drug which is used
11 in Southeast Asia. I actually had to look it up
12 myself 'cause I'm not real familiar with it 'cause
13 it's not -- we don't see it that often.

14 But it is a drug that, although it is used
15 through the opiates receptors of the body, it's a
16 drug that at certain levels is actually used for
17 excitement. It's a drug that is -- usually the leaf
18 is chewed for somebody to get energy. It becomes
19 excited, things of that sort. And then at a certain
20 level -- at low levels, it's excitability; at higher
21 levels it tends to act as an analgesic for pain
22 relief.

23 Kratom in itself actually has caused
24 deaths. Because of that, it can cause seizures, it
25 can cause sudden death, especially of people with

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
22

1 underlying heart disease.

2 So again, we still have that excitability
3 in there. The cocaine's going to cause the
4 excitability of the heart, the kratom's going to
5 cause excitability of the heart, the physical
6 struggle's going to cause it and then you have this,
7 without -- lack of better words, perfect storm being
8 set up where somebody is going to be at high risk
9 for having an arrhythmia and -- and sudden death.

10 Q. Where does the taser fit into all of that
11 description that you just gave us?

12 A. The taser in itself, again the electrical
13 impulse, you know, there has been -- there have been
14 some history of cases that they have caused the
15 cause of death because of the electrical impulse
16 itself. Those type of cases, you die right after
17 the impulse. So what happened is the electrical
18 impulse of the taser is interfering with the
19 electrical impulse of the heart and you die then.

20 But if you if get tased and then -- and you
21 don't die and then minutes later, half an hour, ten
22 minutes later or something and then you die, then
23 the way the taser comes into play on that one is
24 because again, it's just increasing the struggle,
25 increasing all these things. Again, if I -- if I

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
23

1 hit you with an electrical impulse, it's going to
2 make your catecholamines go up. It's just -- you
3 know, it's the body's response to it.

4 Q. Catecholamines being the epinephrine?

5 A. And norepinephrine. Correct.

6 Q. And norepinephrine somehow. Okay.

7 All right. Let me first ask you before we
8 go any further, did you actually view the body cam
9 video from the police officers regarding the
10 detention and struggle with Mr. McBrayer?

11 A. I have viewed parts of them, not all of
12 them.

13 Q. Okay.

14 A. Basically what -- I had asked for the GBI,
15 who did the investigation, to send me everything.
16 Some of it was in written report and some of it were
17 -- were -- some of that was video cam.

18 Q. Uh-huh.

19 A. So I've seen pieces of all. Otherwise,
20 I've looked at the GBI report where they actually
21 document what the individual shows.

22 Q. Did you -- do you remember seeing the --
23 the video cam -- cam video -- body cam video --
24 excuse me. I couldn't get that out right.

25 A. Sure.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
24

1 Q. -- of Officer Tripp, who was the first
2 officer to arrive and see and record Mr. McBrayer's
3 actions before a struggle actually ensued?

4 A. That one, I do not -- I did not see.

5 MR. WEBSTER: Okay.

6 All right. Let's go off the record
7 just a second.

8 THE VIDEOGRAPHER: Off the record at
9 2:24.

10 (Off the record.)

11 THE VIDEOGRAPHER: Back on the record
12 at 2:28.

13 MR. WEBSTER: Okay. Before we go
14 further in questions, I just want to state
15 on the record that we, during the break,
16 viewed the first three minutes of the -- of
17 Officer Tripp's body cam.

18 Do you need to verify that, or no?

19 MR. WILLIAMS: No. That's all
20 right.

21 MR. WEBSTER: All right.

22 BY MR. WEBSTER:

23 Q. All right. All right. Dr. Kraft, my first
24 question to you is this -- well, did you look at the
25 video that we just talked about?

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
25

1 A. Yes, I did.

2 Q. Okay.

3 From the first visions of Mr. McBrayer in
4 that video to the point at which they had him on the
5 ground, about three minutes into the video, did you
6 see enough there to -- to render an opinion as to
7 whether or not Mr. McBrayer was suffering from
8 excited delirium prior to a struggle?

9 A. Well, again, the excited delirium is -- is
10 the whole situation. So it -- meaning excited
11 delirium also brings in the struggle.

12 Q. Okay.

13 A. But again, the classic definition of
14 excited delirium is that you start with somebody who
15 is irrational, who is confused, who is hyperexcited
16 and then becomes violent. And for those that -- for
17 that definition, yes --

18 Q. Okay.

19 A. -- then I saw evidence of that.

20 Q. Okay.

21 Did -- did you see enough evidence to
22 decide whether or not he was -- that Mr. McBrayer
23 was experiencing diminished capacity? And by that I
24 mean diminished ability to form criminal intent and
25 to make effective decisions for his own life.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
26

1 MR. WILLIAMS: I object to the form.

2 THE WITNESS: I would -- my answer to
3 that was he appeared to be acting
4 irrational.

5 BY MR. WEBSTER:

6 Q. Okay. All right.

7 Have you seen excited delirium in other
8 autopsies you've performed with the GBI?

9 A. For the GBI, yes, actually yes.

10 Q. Okay.

11 And what is the prevalence of excited
12 delirium, in cases that you see, first of all?

13 MR. WILLIAMS: I object to the form,
14 just -- I don't know -- vague, ambiguous.

15 Go ahead, if you can respond.

16 THE WITNESS: Again, I'm not sure what
17 the prevalence is as far -- as far as my
18 experience, it's -- it's not very common.

19 BY MR. WEBSTER:

20 Q. Okay.

21 All right. Is it a medical condition, in
22 your opinion?

23 A. Well, it is a -- it -- no, meaning -- no, I
24 mean, it's not a medical diagnosis per se -- well,
25 it's a diagnosis based on multiple factors. So --

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
27

1 and again, I don't think -- and as far as I
2 understand it and I have related it as far as my
3 understanding and teaching or -- is that it is used
4 for somebody who dies.

5 So again, it's -- you know, it's a
6 medical -- medical-legal diagnosis for somebody's
7 death; but as far as would a doctor diagnose
8 somebody with excited delirium, you know, I don't
9 know about that.

10 Q. Well, first of all, do you know whether or
11 not there is a medical response to excited delirium
12 before it becomes fatal; in other words, is there a
13 way to treat it to make sure that it doesn't lead to
14 death, to your knowledge?

15 A. As far as -- it's just going to be
16 observation.

17 Q. Okay.

18 A. Yeah.

19 Q. Have you not -- have you seen any medical
20 literature that talks about the use of carotene
21 injections or other injections to bring the delirium
22 down within a few minutes to increase the
23 survivability of that condition?

24 A. No, I haven't. But again, you would have
25 to -- you have to have somebody observing that to be

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
28

1 able to diag- -- to be able to -- to make that
2 diagnosis, meaning a heart monitor and everything
3 else. So...

4 Q. Okay. All right.

5 So in Mr. McBrayer's case, the excited
6 delirium process, in your mind, started with what
7 you first saw in this video and ended with the end
8 of the struggle and, at some point, his death; is
9 that a fair synopsis of what you consider to be the
10 excited delirium episode?

11 A. Yes.

12 Excited delirium is basically the whole
13 situation encompassed in one, again, his -- you
14 know, his actions leading to, you know, a struggle,
15 again to whether to prevent him from hurting himself
16 or others and then -- and then the subsequent, you
17 know, struggle, different things that happened
18 during the struggle and then the stop of the
19 struggle.

20 Q. Okay.

21 Let me go to the beginning -- potential
22 beginning points of the ex- -- excited delirium.
23 Were you aware of the fact that Mr. McBrayer had
24 been involved in a automobile collision prior to the
25 police arriving at the scene or the sheriff's

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
29

1 arriving at the scene?

2 A. Yes. Yes, I was.

3 Q. And in your autopsy of Mr. McBrayer, did
4 you, in fact, find evidence of trauma to his head?

5 A. He did have trauma to his head, yes.

6 Q. Can you describe for us what that trauma
7 consisted of.

8 A. Yes.

9 Mr. McBrayer had multiple blunt force
10 injuries -- again, these are injuries that occur
11 when something blunt strikes the body or the body
12 strikes something blunt -- consisting of superficial
13 abrasion of his right lateral lower forehead.

14 Q. Can you point to your head and show us
15 where that would be.

16 A. Yes. That would be in the general of the
17 forehead, of course, above the eyes; and right
18 lateral would be right side of the forehead.

19 Q. Okay.

20 A. And then he had, on the right lateral
21 orbit -- orbital rim, which is, again, right lat- --
22 towards the side of the right eye, he had a
23 superficial abrasion. On his maxillary cheek, which
24 is the main cheek area, he had a small abrasion.
25 And then on his left lateral jaw line/upper neck

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

30

1 area -- so again, around the upper neck on the
2 side -- jaw line, of course, is just following your
3 jaw -- he had superficial abrasions, also, multiple
4 -- three superficial abrasions.

5 He also had what's called subgaleal
6 hemorrhages -- subgaleal hemorrhages are bruises of
7 the scalp. So basically during the autopsy the
8 scalp is reflected off the skull so I can look at
9 it -- on the left occipital scalp, which is the left
10 back of the scalp, and also on the left posterior
11 parietal scalp, the -- occipital's the lower part,
12 the posterior parietal's the upper part of the back
13 of your head -- he did have subgaleal hemorrhages,
14 which are, again, bruises of the soft tissue,
15 measuring two and a half times two inches on the
16 occipital and one times one inch on the parietal.
17 And then he had a small occipital right-sided
18 occipital subgaleal hemorrhage of one times
19 three-fourths inches.

20 The skull itself was intact; but when I
21 opened the skull and looked at the brain, he did
22 have a thin, diffuse subdural hemorrhage. Your
23 brain is surrounded by multiple membranes, the pia,
24 this -- arachnoid and the dura. The dura is the
25 thicker membrane. It's a fibrous membrane. So it

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

31

1 sits between the skull and the brain. And subdural
2 just means hemorrhage under that membrane.

3 Q. And where was that on his head?

4 A. And that was diffuse. It was all around
5 the head. And it was thin and it was diffuse and it
6 measured less than 10 millimeters or 10 ccs in
7 measurement.

8 Q. Okay.

9 A. Otherwise, the skull and the brain
10 parenchyma, which is the tissue of the brain, was
11 without evidence of injury.

12 Q. The subdural bleeding, thin as it was, do
13 you have an opinion, within a reasonable degree of
14 medical probability, as to how that occurred to his
15 brain?

16 A. It is a result of a blunt force injury.

17 Q. How so? How does that happen in a blunt --
18 blunt force injury?

19 A. It's -- it's -- it's a motion type of
20 injury. Basically you have vessels that -- veins
21 that come from the brain area into the -- into the
22 dura area. And with turning -- a motion of the
23 head, whether it be forward backward motion, side,
24 side, but a rapid type of motion that the brain
25 actually -- the brain's in the skull, it's floating

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
32

1 in some fluid. Now, there's not a lot of space but
2 there's some space. So it actually is able to move
3 a little bit.

4 So with a swift -- with a swift movement of
5 the head, a rapid acceleration/deceleration, either
6 lateral or forward or backward, you can have that
7 brain shift. And when that brain shifts, it can
8 tear these veins and you'll get a subdural
9 hemorrhage.

10 So in -- in this case, the car accident --
11 or the truck accident may have caused it or the
12 falls to the ground may have caused it.

13 Q. Okay.

14 If you were to assume that the results of
15 his automobile collision were a shattered windshield
16 on the driver's side where it appears to some to
17 look like somebody's head hit that windshield, would
18 that be a sufficient trauma to explain the subdural
19 bleeding that you saw?

20 A. Yes, it would.

21 Q. Okay.

22 When you looked at the film here, the video
23 that we just looked at during the break, did you see
24 any actions that suggested to you that maybe that
25 subdural bleeding came from what you saw on the

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
33

1 video?

2 A. From the video, it seems like every time he
3 went to the ground he went to -- he actually did the
4 falling to the ground. So I did not see a distinct
5 head injury occurring on the ground; but again, I'd
6 have to look at it a little bit better.

7 Q. Right. I understand that.

8 A. But -- yeah.

9 Q. But -- so from what you've seen, would you
10 agree that it's most likely that the subdural
11 bleeding came from the automobile collision he was
12 involved in?

13 A. Looking at the mechanisms of injury, then
14 the -- the motor vehicle accident would have been
15 the more substantial as far as causing that injury,
16 yes.

17 Q. Okay.

18 If, hypothetically, Mr. McBrayer did, in
19 fact, sustain that injury from the car wreck and
20 sustained -- I'm going to use the word diffuse --

21 A. Uh-huh.

22 Q. -- hemorrhaging across his brain, what
23 effect does that have or does that have the
24 potential to have on behavior --

25 A. Uh-huh.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
34

1 Q. -- things like that, within a reasonable
2 degree of medical probability?

3 A. Well, again, it is small and it's less than
4 10 milliliters, you know, which is -- again, in
5 medical sense, that is -- that is not one that would
6 even put somebody into the hospital, that type of --
7 that -- that measurement of a subdural. It would be
8 an observation type of thing, send somebody home.

9 It could have effects. Headaches would be
10 a classic thing. It could make somebody have
11 headaches, it could have eye pain, things of that
12 sort.

13 As far as having a true decrease in -- in
14 mental abilities, in my opinion, that wouldn't have
15 -- that wouldn't have been -- not with this -- not
16 with less than 10 milliliters.

17 Q. Okay.

18 What if we added to that that prior to the
19 automobile wreck Mr. McBrayer was experiencing
20 mental issues of depression -- for lack of a better
21 word, I'll just use mental breakdown type
22 characteristics. If you added that to a person
23 suffering from those mental issues, then involved in
24 a wreck, hitting his head causing diffuse bleeding
25 inside the skull, what effect might that have on

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

35

1 behavior?

2 A. Well, just -- just the -- the mental issues
3 in itself would add somebody acting irrational,
4 irradical, irrational and just not responding the
5 way a normal person would as far as a person without
6 the mental issues.

7 Q. I guess the question I'm trying to get is,
8 would the -- following trauma to the head, while
9 going through that, could that, within a reasonable
10 degree of medical probability, exasperate the mental
11 issues he was experiencing before the head trauma?

12 A. Yes; but it would be just as much as just
13 being in a car accident without a head trauma, as
14 far as my opinion.

15 Q. Okay.

16 A. So just crashing your car in itself would
17 be -- cause acceleration of the -- of that.

18 Q. I gotcha. Okay. All right.

19 Okay. We were talking about excited
20 delirium. And from what you've described, I take it
21 you do agree, within a reasonable degree of medical
22 probability, tasering somebody during an excited
23 delirium episode would increase risk of death to the
24 -- to the arrestee?

25 MR. WILLIAMS: Object to form.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

36

1 THE WITNESS: It potentially could,
2 yes.

3 BY MR. WEBSTER:

4 Q. Okay.

5 What does the phrase unresponsiveness mean
6 to you?

7 A. To me, it means that with physical or -- or
8 verbal stimulation someone does not respond.

9 Q. Okay.

10 And is that a significant medical
11 condition, if people are not responding to stimuli?

12 A. Yes.

13 Q. Can that cause -- lead to death?

14 A. Yes, it can.

15 Q. Okay.

16 If -- if someone who is -- has paralegal --
17 paramedical, CPR type training, experiences somebody
18 who's unresponsive, what should that person do in
19 response to?

20 A. Well, your normal would be your -- your
21 ABCs, airway -- make sure their airway's open, that
22 they're breathing and they have circulation.

23 Q. All right. So first of all, how do you
24 check and make sure the airway's open?

25 A. You would go ahead and see if you -- if the

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
37

1 person's breathing, go ahead and feel for breath and
2 stuff of that sort.

3 Q. Feel for breath, how do you do that?

4 A. Put your hand up to their mouth or -- or
5 see if -- their rise or fall of their chest.

6 Q. Okay.

7 And then the B was what? I'm sorry.

8 A. Breathing.

9 Q. Oh, okay.

10 A. Would be again airway -- you know, again,
11 make sure the airway's open and the breathing; and
12 then the circulation would be taking pulses.

13 Q. Okay.

14 And then the -- and C was taking pulses --

15 A. Yes.

16 Q. -- you said?

17 What are you looking for when you're
18 checking the pulse?

19 A. To see if there's a rapid heart rate or too
20 slow. First of all, is there a heart rate, is
21 somebody -- you know, is somebody deceased at this
22 point. A rapid heart rate, slow heart rate,
23 irregular heart rate, anything of that sort.

24 Q. Okay.

25 And if there is -- well, let me strike that

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
38

1 and ask this question.

2 If someone has -- I know this sounds kind
3 of crazy to ask it like this. But if somebody has
4 experienced death, do their -- does their heart
5 continue to beat for a period of time after --

6 A. It's going to --

7 Q. -- the point of death?

8 A. -- depend on what type of death. Cardiac
9 death, no.

10 Q. Okay.

11 A. Brain death, yes --

12 Q. Okay.

13 A. -- to a point.

14 Q. And brain death comes from what?

15 A. A lack of oxygen to the brain.

16 Q. Okay.

17 Now, a while back you were telling us about
18 how excited delirium including the struggle and the
19 use of the tasers and the presence of the chemicals
20 in the blood all create -- I think you used the
21 phrase perfect storm.

22 A. Correct.

23 Q. If we added to that during the process of
24 the struggle a restriction on breathing, what play,
25 if any, would that have in the cause of death?

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

39

1 A. If you would add they're restricted of
2 breathing, yes. A lack of oxygen -- restriction of
3 the breathing would lead to a decreased oxygen in
4 the blood, which would -- going to accentuate --
5 accentuate everything, just increase it up.

6 Q. Obviously there are many ways to reduce
7 oxygen in breathing; but if it was done by means of
8 compression on the chest for a period of say seven
9 to nine minutes, could that act itself severely
10 restrict oxygen to the -- to the body?

11 A. Yes, it could.

12 Q. Are you familiar with the phrase
13 compressive asphyxia?

14 A. Yes. Traumatic --

15 Q. What --

16 A. -- compressive asphyxia.

17 Q. What does that mean to you?

18 A. That is where somebody -- a body's in a
19 position or something is on the body in a position
20 that does not allow the chest to rise.

21 When you breathe, when you inhale, just by
22 definition, you expand your chest so to get the --
23 to get the -- to get the oxygen into your lungs. As
24 you exhale, your -- your chest deflates. If you
25 cannot expand your chest, then you're -- then you

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
40

1 cannot intake oxygen into your lungs.

2 In compressive type of asphyxia,
3 classically you'll see petechiae and burst blood
4 vessels in the conjunctiva of the eyes and then
5 ultimately the face, especially if they -- someone
6 passes away from it.

7 Q. Okay.

8 Now, as I -- have you seen medical study,
9 though, that suggests that, unlike choking from the
10 front with my hand on somebody, that chest
11 compressing asphyxia usually is not relat- -- is not
12 associated with petechiae in the eye? Have you ever
13 seen medical literature to that effect?

14 A. I have not.

15 I -- I've done a lot of positional
16 asphyxias; and in the cases that I have, they have
17 petechiae usually above the area of compression, not
18 only of the -- of the eyes, of the face, of the neck
19 area if it's above it and also a lot of times in the
20 gingiva of the -- of the mouth.

21 Q. Okay.

22 Well, are -- are you familiar with an
23 periodical known as the Journal of Forensic Science?

24 A. Yes.

25 Q. Is that an arti- -- a periodical that you

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
41

1 ascribe to?

2 A. Yes.

3 Q. Have you seen the study by Ely and Hirsch
4 in the Journal of Forensic Science dated 2000 -- the
5 year 2000 --

6 A. Off the top of my head, no.

7 Q. I'm sorry. Let me give you the title --

8 A. Sure.

9 Q. -- before you answer. I apologize for
10 interrupting you.

11 A. That's okay.

12 Q. -- entitled Asphyxial Deaths and Petechiae:
13 A Review?

14 A. On the -- no, I -- I don't remember if I
15 did or not, truthfully.

16 MR. WEBSTER: Okay.

17 Let me -- let me -- let's mark this
18 Exhibit 2.

19 (Whereupon, Plaintiff's Exhibit 2 was
20 marked for identification.)

21 BY MR. WEBSTER:

22 Q. I realize you haven't had a chance to look
23 at this then based on what you told us, but I would
24 like you to take a look at it very briefly.

25 A. Yes.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
42

1 Q. I'm not going to -- this is not intended to
2 test your opinion about this article, 'cause I know
3 you would otherwise want to read it and study it and
4 things like that. But I do want to ask you if
5 you'll flip over to the third page, you'll see where
6 I highlighted a couple of statements they made in
7 there. And I just want to ask you your opinion
8 regarding those statements.

9 The first one says -- and I quote --
10 considering all of the foregoing observations, it is
11 our contention that no relationship exists between
12 the develop of -- development of petechiae and the
13 presence or absence of asphyxia.

14 Do you agree or disagree with that --

15 A. Well --

16 Q. -- as a general rule of --

17 A. I would --

18 Q. -- practice?

19 A. I would have to say, of course, the same --
20 considering all the foregoing observations -- which
21 I haven't read what the foregoing observations were,
22 which kind of puts me at a little bit of a --

23 Q. I agree.

24 A. -- at a disadvantage here. But just a
25 statement that the presence or absence of a six --

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
43

1 okay. No relationship between the development of
2 petechiae and the presence or absence of asphyxia.

3 I honestly couldn't comment without reading
4 the whole article, 'cause I -- I'm not quite sure --

5 Q. Okay.

6 A. -- what these foregoing observations are.

7 Q. All right. Fair enough.

8 And I'm not going to ask you to study the
9 article, ask you -- let me ask you, though, about
10 the last sentence that I highlighted where it
11 says -- and I quote -- conversely, the occasional
12 absence of facial plethora and petechiae in victims
13 of chest compressions, traumatic asphyxia, is best
14 explained by overwhelming crushing forces
15 effectively compress the left ventricle and arrests
16 further cardiac output thereby precluding cephalic
17 venous congestion.

18 Would you agree with that statement?

19 A. If I'm interpreting what they're saying --
20 which again, without reading the rest of the
21 article, I couldn't be sure -- if they're saying a
22 pressure is so severe on -- on somebody's chest that
23 their heart cannot beat anymore, because if they're
24 saying compresses the left ventricle and arrests
25 further cardiac output, which means you're dead,

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
44

1 then I would say yeah, I would not expect petechiae
2 at that case.

3 Q. Okay.

4 A. But again, I'm not reading the whole thing.
5 But if they're saying that if you have a heavy
6 enough pressure on your chest where your heart
7 stops, then petechiae probably wouldn't be there,
8 'cause your heart's not pumping anymore.

9 Q. Okay.

10 Do you have an opinion, within a reasonable
11 degree of medical probability, as to how much weight
12 would have to be on the chest -- first question, how
13 much weight to be on the chest to result in the
14 phenomenon they talk about in that last sentence in
15 the article?

16 A. It's going to depend on the size of the
17 person, their musculature development. I mean,
18 it's -- it's -- it's going to vary from
19 person to person.

20 Q. Okay.

21 Can you plug in Mr. McBrayer's size in this
22 and come to a conclusion?

23 A. Again, I -- I can tell you what his body
24 habitus is. I mean, he was well developed, you
25 know, and well nourished; but as far as his physical

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
45

1 -- you know, he was actually mildly overweight. But
2 as far as his physical, you know, muscles, as far as
3 -- I couldn't go, 'cause I -- I don't know what his
4 physical -- what's the word I'm looking for -- how
5 physically fit he is.

6 Q. Okay.

7 A. Put it that way.

8 Q. All right.

9 A. I can tell you what I saw with the body,
10 but that doesn't necessarily apply to --

11 Q. Okay.

12 A. -- his physical fitness as a live person.

13 Q. Okay.

14 Would -- would the weight of a man placing
15 his knee on the back for a period of say two or
16 three minutes be enough, in your opinion?

17 A. Again, it's going to -- it's a case to case
18 basis. It would have to depend on this person's
19 shape, how much of the -- you know, somebody having
20 their knee on somebody's chest, if -- if -- if
21 they're -- that's all that's on the chest and the
22 whole body weight of the person is completely off
23 the ground at that point other than the knee, that's
24 one thing. If the other -- if the same person's
25 knee is on the ground taking some of the weight, it

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
46

1 -- it just -- you wouldn't be able to -- you can't
2 really -- there's not a -- there's not a formula you
3 can use that fits every case. You would have to
4 look at all the individual cases.

5 Q. Okay. Sounds -- that's fair enough.

6 Suffice it to say, though, that placing a
7 knee or a hand or an elbow with some or all of your
8 body weight on it when a man's laying face down in
9 the dirt, hands handcuffed behind his back, that
10 could contribute to a reduction in oxygen that is
11 already a bad situation with the excited delirium to
12 begin with, you would agree with that, wouldn't you?

13 A. I would say --

14 MR. WILLIAMS: Object to form.

15 All right.

16 THE WITNESS: I would say it has the
17 potential to, again.

18 BY MR. WEBSTER:

19 Q. Okay.

20 I had asked you about the prevalence of
21 excited delirium. I didn't quite follow up with a
22 final question I had for that.

23 Have you done any study or research to find
24 out what the prevalence of excited delirium is
25 nationwide as an issue for police officers to

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
47

1 confront?

2 A. No, I have not.

3 Q. Okay.

4 Haven't read any police articles or seen
5 training videos or anything like that --

6 A. No.

7 Q. -- on excited delirium?

8 Okay.

9 A. No. I mean, as far as my studies of it
10 through -- through the -- this -- you know, through
11 medical training, yes; but as far as -- no, as far
12 as anything recently, no.

13 Q. Well, when you say your research and your
14 training, does that touch on the prevalence of
15 excited delirium in our society?

16 A. Again, not as far as -- prevalence is going
17 to have to with -- with -- you're going to have to
18 take the time frame that we're talking about.
19 So, you know, all I know is it's not -- it's not
20 common, it's -- you know, in my -- in my case as far
21 as my practice and my peers' practice, meaning
22 people I've worked with, we -- we don't commonly see
23 it.

24 Q. Okay.

25 Kratom, by the way, you said you researched

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
48

1 that. You did find out that kratom is actually
2 legal to use in the state of Georgia?

3 A. It -- it is right now as far as -- yes.

4 Q. Okay.

5 A. There -- there's been some actions to try
6 to make it illegal, but as far as -- and that's in
7 the federal realm.

8 Q. Right.

9 A. So yes.

10 Q. And to your knowledge, it was legal to buy
11 and use in 2019?

12 A. As from my knowledge, yes.

13 Q. Okay.

14 All right. I'll -- I think I'm getting
15 close to being through, but I want to ask you this
16 questions (sic) back on the -- the topic of
17 unresponsiveness.

18 I had asked you what a medically trained
19 person should do to deal with unresponsiveness and
20 you said that the ABCs, airway, breathing and
21 cardiac checking the pulse stuff. Can
22 unresponsiveness be dealt with while an arrestee is
23 in the back seat of an automobiles (sic) with his
24 hands handcuffed behind his back and his feet
25 strapped together?

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
49

1 MR. WILLIAMS: Object to form.

2 BY MR. WEBSTER:

3 Q. Can it be dealt with effectively, I should
4 say?

5 A. I'm going to -- what do you mean deal with?

6 Q. Well --

7 A. I -- I -- I guess I need to under- -- an
8 explanation of that.

9 Q. Thank you. That's fair enough.

10 What I'm asking you is, if a person in the
11 back seat of a automobile is handcuffed behind his
12 back, his feet are strapped together and he becomes
13 unresponsive while in that back seat, would you, as
14 a licensed physician, expect someone to be
15 effectively -- be able to effectively examine and
16 try to respond to the unresponsiveness while the
17 arrestee is in the back seat of that car?

18 MR. WILLIAMS: Object to form.

19 THE WITNESS: I would say no, they --

20 I would remove them from the vehicle.

21 BY MR. WEBSTER:

22 Q. Why so?

23 A. To be able to fully evaluate the person.

24 Q. Okay.

25 A. To fully evaluate the person and also to --

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

50

1 as a medical professional, wanting to put him on a
2 monitor and to see exactly what's going on.

3 Q. Okay.

4 So in that -- and I realize this is a very
5 limited analysis --

6 A. Uh-huh.

7 Q. -- and I realize I've kind of taken you out
8 of the --

9 A. Uh-huh.

10 Q. -- the crime lab setting; but you would
11 agree then that if somebody is in the back seat of a
12 car handcuffed, feet strapped, becomes unresponsive,
13 the car itself makes it very difficult for you to
14 deal with that unresponsiveness --

15 MR. WILLIAMS: Object to the form.

16 BY MR. WEBSTER:

17 Q. -- if not impossible?

18 A. I -- yes. I would have to remove the body
19 -- remove the -- remove the person to be able to
20 evaluate them and -- and -- and also treat them.

21 Q. Okay.

22 Is there a frame of time -- if somebody
23 becomes unresponsive, is there a frame of time as to
24 how long you have to be able to save them from that
25 unresponsiveness?

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
51

1 A. Well, again, the problem is we -- we
2 haven't established what the definition of
3 unresponsive is to the point meaning do they have a
4 pulse, are they breathing or are they -- or are they
5 just unconscious, where obvious -- are they just
6 unconscious, you know, classically, you know, passed
7 out, or are they breathing or is there circulation.

8 So without knowing those factors, I
9 couldn't say. I mean, if the heart's not pumping,
10 then we have an emergency. If you're not breathing,
11 that's an emergency. But if you're breathing and
12 you have a heart rate and you're just not responding
13 because you're passed out, that's -- that's --
14 that's a different situation.

15 Q. I understand. Such --

16 A. I mean, it's still going to -- it still, in
17 my opinion as a medical doctor, would -- would need
18 -- would -- would need attention; but as far as
19 without knowing those other things, I couldn't give
20 you a time frame.

21 Q. Okay. Let me -- let me put some things in
22 there then to -- just to see if you have an opinion.

23 If a person stops breathing while in the
24 back seat of a car with his hands handcuffed behind
25 his back, his legs strapped together, from the

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
52

1 moment he stops breathing, how long does he have to
2 be able to have any chance of recovering from that
3 condition?

4 A. Again, you know, I can't put specific
5 numbers; but -- but they -- but, you know, again,
6 just thinking about basic CPR, you know, somebody
7 that you come up upon, they talk about the minutes.
8 You know, so we're talking about, you know, a period
9 of minutes that you would have to respond to that.
10 Again, how many, I couldn't tell you for sure. I
11 would be definitely be within ten minutes. You
12 know, it could be less, it could be more.

13 MR. WEBSTER: Okay. All right.

14 Let's go off the record for a
15 second.

16 THE VIDEOGRAPHER: Off the record at
17 2:59.

18 (Off the record.)

19 THE VIDEOGRAPHER: We are back on the
20 record at 2:59.

21 MR. WEBSTER: Dr. Kraft, I have no
22 further questions. Thank you very much for
23 your time. You've been very helpful
24 today --

25 THE WITNESS: You're welcome.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRAIER vs HON. GENE SCARBROUGH

July 15, 2020
53

EXAMINATION

4 BY MR. WILLIAMS:

5 Q. Dr. Kraft, my name is Terry Williams; and I
6 represent the defendant, Sheriff Gene Scarbrough of
7 Tift County. And so I'm going to just follow up
8 with some questions based on what you've testified
9 to thus far.

10 Going back to your classification of this
11 situation as a homicide -- and as I understand it
12 from what you've said and from looking at your
13 report, you determined that it was best
14 classified -- that's the term you used, best
15 classified -- as a homicide as far as manner of
16 death. And am I correct in saying that it was
17 because there was interaction with deputies during
18 the events leading up to him passing away?

19 A. Yes. That is correct.

20 Q. So -- but as you stated, the actions of the
21 deputies, both the use of the taser and the physical
22 restraint, by themselves would not have caused
23 death, correct?

24 A. The findings at autopsy, yes. As far as
25 the findings at autopsy which --

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
54

1 Q. Right.

2 A. -- which again, per investigation, were
3 result of the physical struggle and the -- and the
4 tasing, yes --

5 Q. Right.

6 A. -- in themselves would not have caused his
7 death.

8 Q. Right.

9 To be clear about that, the findings that
10 you made during the autopsy did not indicate that
11 the use of the taser or the physical restraints
12 would have caused death by themselves?

13 A. That is correct.

14 Q. So it was really only the fact that he --
15 that Mr. McBrayer had drugs in his system, which
16 both were stimulants, and was stimulated already
17 because of whatever his excitement was, either from
18 the drugs or perhaps mental issues, that actually
19 led to the death; is that correct?

20 A. (No response.)

21 Q. In other words, those -- those factors had
22 to be present for the death to occur since it was --

23 A. That -- that is correct.

24 Q. -- based -- based on what you found --

25 A. You had to have everything together.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
55

1 Q. All right.

2 A. Yes.

3 Q. So, in fact, the -- when the deputies
4 encountered Mr. McBrayer, as the video that you
5 watched earlier indicate, he already seemed to be in
6 excited state, correct?

7 A. Yes. He seemed -- according to the video
8 and from the reports that I had, he was -- he was
9 running around and he was -- he was acting
10 irrational and excited, yes.

11 Q. All right.

12 He was yelling, talking fast, those kind of
13 things, correct?

14 A. Yes.

15 Q. And those are things -- symptoms that you
16 associate with evidence of excited delirium,
17 correct?

18 A. That's a -- that's a part of it, yes.
19 That's what I -- yes.

20 Q. All right.

21 The excited state and the delirious state,
22 both of those states can actually be caused by the
23 drugs that were in Mr. McBrayer's system, correct?

24 A. Yes, they could have. Yes.

25 Q. Okay.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
56

1 And we've already established that he had
2 cocaine in his system, correct?

3 A. That is correct.

4 Q. And he had this kratom herb or drug,
5 whatever it is, right?

6 A. That is correct.

7 Q. And kratom is also a stimulant, correct?

8 A. Yes, it is.

9 Q. And I've noticed -- I did a little research
10 on it -- kratom is actually -- has been known to
11 cause death in a certain number of people,
12 particularly when combined with other drugs such as
13 cocaine.

14 Are you familiar with that? Did you see
15 that in your research?

16 A. Yes, I did.

17 Q. Okay.

18 And in case -- this situation we know that
19 Mr. McBrayer had both cocaine and kratom in his
20 system, correct?

21 A. That is correct.

22 Q. The combination of those two drugs may well
23 have caused his death without any other factors
24 being involved, true?

25 A. It's possible, yes.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

57

1 Q. And I've seen other cases involving people
2 who have died with cocaine in their system, I've
3 done enough research to see there's research out
4 there that shows that cocaine itself can cause
5 disturbances in heart rhythm, true?

6 A. Correct.

7 Q. It can cause heart attacks, correct?

8 A. Correct.

9 Q. It can cause heart failure --

10 A. Correct.

11 Q. -- correct?

12 And it can cause respiratory failure,
13 correct?

14 A. Secondary to the heart, yes.

15 Q. Okay.

16 You agree that symptoms of cocaine
17 intoxication can include extreme agitation and
18 aggressive behavior?

19 A. That is correct.

20 Q. And we saw that with Mr. McBrayer in the
21 video, true?

22 A. That is correct.

23 Q. Cocaine also can cause hallucinations and
24 paranoia?

25 A. That is correct.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
58

1 Q. We saw that also in the video?

2 A. That is correct.

3 Q. Cocaine can cause rambling speech and rapid
4 talking, correct?

5 A. Correct.

6 Q. We saw that in the video --

7 A. Yes.

8 Q. -- correct? Okay.

9 I also noticed in -- with the kratom that
10 it's also described as a psychotropic chemical or
11 drug?

12 A. Correct.

13 Q. Okay.

14 And that can also cause mind-altering
15 effects on someone, such as hallucinations and
16 paranoia?

17 A. That's -- yes.

18 Q. Especially if combined with another drug
19 which also causes those same things, true?

20 A. That is correct.

21 Q. You found no evidence on autopsy that any
22 pressure that had been put on Mr. McBrayer's
23 torso/upper back doing the restraint caused any type
24 of physical injuries to him?

25 A. I found evidence of some abrasions and --

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

59

1 and bruising and things of that sort, but as far as
2 -- as far as -- and -- and some of them, in my
3 opinion, resulted from the restraint; but in
4 themselves, they would not have caused his death.

5 Q. Okay. Right. But I -- I'm just really --
6 I should have been more specific.

7 There's no indication that there was any
8 type of internal injuries caused from like a
9 crushing -- such weight that would have caused
10 internal type injuries from restraint, there was
11 nothing found on autopsy on that?

12 A. That is correct.

13 Q. Okay.

14 A. Everything was soft tissue. There was no
15 bone fractures or internal organ injuries, other
16 than the -- the -- the bleeding -- the subdural
17 hemorrhage around the brain.

18 Q. And the subdural bleeding that you saw --
19 which you've described as being pretty small, fairly
20 minor --

21 A. That's correct.

22 Q. -- correct?

23 -- would -- that would not have been
24 observable to deputies at the scene in the -- in the
25 dark dealing with Mr. McBrayer, would it?

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
60

1 A. No, it would not.

2 Q. Okay.

3 The abrasions and scrapes that you
4 described that you saw about Mr. McBrayer's face and
5 head, you really can't say how those would have been
6 caused, whether it would have been from the
7 automobile accident that he had, his own running
8 around, running into things or his face being down
9 in the dirt, true? You wouldn't be able to --

10 A. That is correct. I couldn't say exactly
11 what caused them.

12 Q. It could have happened during any of those
13 events?

14 A. Yes.

15 Q. Going back to the -- the taser, are you
16 familiar enough with -- with tasers to know how they
17 sound when they're being deployed? I mean, have you
18 been around them enough or seen videos to know
19 how --

20 A. As far as the -- if we're talking about
21 that pulse sound, yes.

22 Q. Yeah.

23 So are you familiar with or have you ever
24 heard that if you hear those loud clicks, that
25 indicates the taser's not working, it's not

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
61

1 effectively delivering the electrical conduct?

2 A. Actually I've never heard of that, no.

3 Q. Okay.

4 That it'll sound differently if there's a
5 good contact? You're not familiar enough with --

6 A. No, I'm not.

7 Q. Okay.

8 A. Not that familiar with them.

9 Q. Well, you -- do you agree, though, based
10 upon what we see in the video that Mr. McBrayer
11 never seems to show any effects from the taser
12 deployments?

13 A. That is correct. It does not -- the
14 classic response that normally you would see or that
15 you would expect to see, he did not have.

16 Q. Right. Which is the immobilization or the
17 -- the tightening up, the muscle constriction and
18 falling to the ground?

19 A. Correct.

20 Q. In fact, he continues to move and continues
21 talking throughout the time that the tasers that
22 are -- attempted to be deployed, correct?

23 A. Per the video, yes. Uh-huh.

24 Q. And I know you watched one of the other --
25 other than the one we've seen today, you watched a

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
62

1 different video, right --

2 A. Yes.

3 Q. -- of the same -- did you see the video
4 where it shows the officers attempting to hold him
5 down to get the handcuffs and the -- the restraints
6 on him?

7 A. I did see -- I -- I have seen a video of
8 that, yes.

9 Q. Okay.

10 And you --

11 A. Again, I don't know if there's multiple
12 ones of it. I know I've seen one at least.

13 Q. And do you recall that during the time that
14 the officers -- or either got their hands on his
15 back or at some points a knee on his back from a
16 squatting position to hold him down that during that
17 time McBrayer is continuing to talk and yell and
18 move --

19 A. Yes.

20 Q. -- about?

21 A. From -- from my -- right. From my
22 observation, right, he was -- you know, he's still
23 moving and he's still talking, he's verbally
24 talking. Uh-huh.

25 Q. And would you agree from the beginning to

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

63

1 the end of the time when they finally get him fully
2 restrained and fully cuffed he's moving, he's
3 talking the entire time?

4 A. On the video I saw, yes.

5 Q. Yes. Okay.

6 And doesn't that indicate to you that he
7 was able to breathe sufficiently, the fact that he
8 is talking and moving about?

9 A. Yes.

10 Q. Okay.

11 Does -- was there any indication, either
12 from the results of your autopsy or of what you saw
13 in the video, that there was a significant
14 restriction of his -- of McBrayer's ability to
15 breathe during this incident?

16 A. Not that I have found, no.

17 MR. WILLIAMS: Okay.

18 (A pause ensued.)

19 BY MR. WILLIAMS:

20 Q. You talked a good bit earlier in your
21 deposition about the release of those catecholamines
22 during the excited delirium. And -- and those are
23 released through the adrenal glands, right, and
24 basically --

25 A. That is correct.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
64

1 Q. -- we kind of refer to them generally as
2 adrenaline --

3 A. Yes.

4 Q. -- and norepinephrine?

5 A. Yes, that's another name for them. Uh-huh.

6 Q. Okay. So epinephrine and norepinephrine --

7 A. Yes.

8 Q. -- are two -- the two types?

9 A. (Witness nods head affirmatively.)

10 Q. Those will also be released during an --
11 just an excited state in general, correct?

12 A. That is correct.

13 Q. So when we -- we get scared by something or
14 that you're almost in a accident and your heart rate
15 goes up, that's that -- you're releasing those
16 catecholamines, correct?

17 A. Yes.

18 Q. And you would expected that Mr. McBrayer
19 would have been releasing those catecholamines from
20 the -- before he ever even got into the physical
21 altercation with the deputies, correct?

22 A. That is correct.

23 Q. Okay.

24 There's no way to measure now how much he
25 would have been experiencing before, during or after

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
65

1 the -- the altercation with the deputies, correct?

2 A. That is correct.

3 MR. WILLIAMS: Hold on just a second.

4 (A pause ensued.)

5 MR. WEBSTER: Okay. You going to be
6 just a second or you want to go off the
7 record or --

8 MR. WILLIAMS: No. I just have one
9 thing.

10 MR. WEBSTER: Oh, okay.

11 MR. WILLIAMS: One note I had made
12 earlier, but it was on this document that
13 I...

14 MR. WEBSTER: Okay.

15 (A pause ensued.)

16 MR. WILLIAMS: Okay. So...

17 BY MR. WILLIAMS:

18 Q. None of the injuries that you saw on
19 autopsy, these blunt force trauma injuries that were
20 -- you often described as being super- --
21 superficial abrasions, some mild subdural --
22 subdural hematoma, subdural bleeding, none of those
23 would have been life-threatening injuries either,
24 correct?

25 A. In my opinion, no.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
66

1 Q. Okay.

2 And because of the potential -- well,
3 because of the effects of the cocaine and the kratom
4 and the enlarged heart as being possible
5 explanations for his cause of death, you can't say,
6 to a reasonable degree of medical probability, that
7 he would have lived but for the use of the taser and
8 the altercation with the deputies, correct?

9 A. It -- I always -- when -- when you use that
10 term, that always messes me up. So I have to -- can
11 you ask it to me a different way just because...

12 Q. So you can't say that Mr. McBrayer, with
13 these drugs he had in his system, with his enlarged
14 heart and the -- all the other things that were
15 going on, would have lived but for the use of the
16 taser and the restraint by the deputies in this
17 situation? In other words, if they hadn't used the
18 taser and restrained him, he would have lived, you
19 can't say that to a reasonable degree of
20 probability?

21 A. I cannot say that. That is correct.

22 Q. Because all these other things, the drugs
23 in his system, his excitement and all those things
24 could have led to his death?

25 A. Yes, they could.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
67

1 Q. Okay.

2 A. But I would say since it all happened,
3 that's why I have to bring it into -- I cannot take
4 one piece out without -- you just can't do it at
5 postmortem.

6 Q. Right. 'Cause you have to --

7 A. Yes.

8 Q. -- look at all these potential factors?

9 A. That is correct.

10 Q. You can't say that any particular one of
11 them would have caused his death regardless?

12 A. That is correct.

13 MR. WILLIAMS: Yeah.

14 All right. Thanks.

15 FURTHER EXAMINATION

16 BY MR. WEBSTER:

17 Q. What you can say, though, Doctor, is --
18 within a reasonable degree of medical probability,
19 is that the struggle and the use of the tasers
20 contributed to the cause of death in this case?

21 A. Yes. They were additive to it, yes.

22 Q. And they were so additive to it that in
23 classifying this case as either a homicide,
24 accidental death, natural causes, you were
25 satisfied, within a reasonable degree of medical

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
68

1 probability, that this death is classified as a
2 homicide?

3 MR. WILLIAMS: Object to the form.

4 Go ahead.

5 THE WITNESS: Yeah, I -- I -- I can't
6 say that they're any more important than
7 anything else but because they're there, I
8 have to call it a homicide.

9 BY MR. WEBSTER:

10 Q. Okay.

11 So you're not changing your opinion on
12 classification and you're not changing your opinion
13 of the at least partial cause of death, the role of
14 the struggle and the use of the taser?

15 A. That it -- that it was additive to
16 everything, yes.

17 Q. Okay.

18 This question about still moving and
19 talking when they had his -- their knee and their --
20 and hands on his back and chest -- not on his chest.
21 His chest was on the ground.

22 A. Correct.

23 Q. But on his back and his -- and there is a
24 -- you did see in the videos a period of time when
25 Officer Tripp had his hand at the base of the

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
69

1 neck?

2 A. I did see that, yes.

3 Q. Okay.

4 First of all --

5 A. In the area of the back of the neck.

6 Again, I -- without -- right. I couldn't tell
7 exactly where it was, but it was in the neck area.

8 Q. Okay.

9 First of all, those actions, while they may
10 not be enough to stop breathing altogether, you do
11 agree, within a reasonable degree of medical
12 probability, that they would be sufficient to
13 restrict breathing, to lower the amount of oxygen he
14 would get into his body?

15 MR. WILLIAMS: Object to form.

16 THE WITNESS: Again, they potentially
17 could. Without knowing exactly where these
18 -- where the -- where they were and the
19 amount of pressure, I couldn't say 100
20 percent. I would -- but potentially they
21 had the potential of causing that --

22 MR. WEBSTER: Okay.

23 THE WITNESS: -- yes.

24 BY MR. WEBSTER:

25 Q. All right.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

70

1 And for the benefit of whoever is going to
2 listen to and read this deposition -- and we don't
3 know who exactly who all going to do yet -- when you
4 got Mr. McBrayer's body for the autopsy, you
5 described that his -- I'm trying -- his liv- -- his
6 livor -- I don't know how y'all -- you pronounce
7 that. I always --

8 A. Yes, livor.

9 Q. -- say livor.

10 A. Uh-huh.

11 Q. -- was actually red and purple throughout
12 the back side of his body, the posterior side; is
13 that correct?

14 A. That is correct.

15 Q. And that's because as he lay there for two
16 days waiting for the autopsy blood settled down into
17 the back side of his back, pooled in his back and
18 torso?

19 A. That is correct.

20 Q. So I know you're trained and you're
21 experienced. So I'm sure you can still see bruising
22 and distinguish bruising versus just normal pooling
23 through livor -- in the livor process; but you do
24 agree that if the back's already red and purple from
25 pooling of blood, that makes it far more difficult

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

71

1 to assess extensive bruising and things of that
2 nature on the back?

3 A. Not necessarily. I mean, honestly, because
4 the people who arrive at our office are in a body
5 bag and they're always lying on their back, the
6 majority of our people have red/purple posterior
7 livor. That's the majority. And if there's a
8 bruise there, especially on a Caucasian person, a
9 white person, it -- I -- I can tell it.

10 Q. You can still see a bruise even --

11 A. Yeah.

12 Q. -- amidst the red/purple livor?

13 A. That -- yes, I can.

14 Q. Okay. All right.

15 One final question. Do you know in -- in
16 producing the history of this case for you to form
17 your opinions, do you know exactly how many times
18 Mr. McBrayer was tasered by Officers Spurgeon and
19 Tripp?

20 A. I can just say from what I wrote in my
21 summary and interpretation, and that was based on
22 the GBI investigation. Let's see...

23 (A pause ensued.)

24 A. I have it -- deploying the taser once,
25 reengage, recycle the taser (pronunciation) --

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
72

1 taser. So that would be twice.

2 (A pause ensued.)

3 A. And then we have the stun -- then we have
4 the drive -- the drive stun -- stunning, which is
5 not the probes but the actual -- so -- and that was
6 what I found at autopsy. I found -- well, I -- I
7 found two probe areas on -- on the autopsy and then
8 I found this area of -- which is consistent with the
9 -- with -- consistent with the drive because that's
10 using the prongs that are built into the machine
11 that were on his right lateral torso area.

12 Q. Does the body show evidence of whether
13 electricity went through it in any of those areas
14 that you saw?

15 A. I just basically -- as far as electricity,
16 no, one hundred percent. What I did see is I saw
17 puncture where the probes went in. The puncture
18 wounds did show a localized hemorrhage around them,
19 and then where the drive -- drive stun was.

20 (A pause ensued.)

21 A. Actually I did not -- there are some areas
22 of abrasion, eroded areas of the -- of red defects,
23 but I didn't see any hemorrhage associated with
24 those.

25 Q. So those red defects, would that be

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
73

1 evidence of electricity going in and through the
2 drive stun?

3 A. Not necessarily, because if I hit you with
4 them, I can make a -- I can make the same mark if I
5 just hit you with it.

6 Q. So you've seen drive stun markings before,
7 I assume?

8 A. Yes.

9 Q. Did his appear any different than any other
10 drive stun markings that you've seen?

11 A. No, they did not.

12 Q. Okay.

13 And finally, you would agree then that when
14 we were talking about how the use of a taser can
15 influence the adverse aspects of the excited
16 delirium, you would agree that multiple tasering
17 increases the risk and the role of that taser effect
18 on excited delirium? In other words, if I stun up
19 once, you get something; but if I stun you two --

20 A. Correct.

21 Q. -- or three times, it increases the risk --

22 A. It would in- -- right. It would increase
23 the -- the norepinephrine and the epinephrine, the
24 catecholamines response and things of that sort,
25 yes.

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
74

1 MR. WEBSTER: All right.

2 Thank you very much, Doctor. You've
3 been very helpful.

4 THE WITNESS: No problem.

5 MR. WEBSTER: I appreciate your
6 time.

7 THE WITNESS: You're welcome.

8 MR. WILLIAMS: Thank you.

9 THE WITNESS: Thank you.

10 MR. WILLIAMS: Good to meet you.

11 THE WITNESS: Good to meet you.

12 THE VIDEOGRAPHER: This concludes the
13 deposition of Dr. Kraft. We are off the
14 record at 3:23.

15 (Deposition concluded at 3:23 p.m.)

16 (Signature reserved.)

17

18

19

20

21

22

23

24

25

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

75

1 C E R T I F I C A T E

2

3 STATE OF GEORGIA:
4 JASPER COUNTY:

5 I hereby certify that the foregoing
6 deposition was taken down, as stated in the caption,
7 and the colloquies, questions and answers were
reduced to typewriting under my direction; that the
foregoing transcript is a true and correct record of
the evidence given.

8 The above certification is expressly
9 withdrawn and denied upon the disassembly or
photocopying of the foregoing transcript, unless
said disassembly or photocopying is done under the
auspices of Esquire Deposition Solutions and the
signature and original seal is attached thereto.

10 I further certify that I am not a relative
11 or employee or attorney of any party, nor am I
financially interested in the outcome of the action.

12 This, the 25th day of July 2020.

13

14

15 *Susan W. Tarpley*

16 _____
17 Susan W. Tarpley, CCR
Georgia CCR B-1489

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
76

1 D I S C L O S U R E

2

3 STATE OF GEORGIA) DEPONENT:

4 JASPER COUNTY) MARYANN GAFFNEY-KRAFT, DO

5

6

7 Pursuant to Article 8.B of the Rules and
8 Regulations of the Board of Court Reporting of the
9 Judicial Council of Georgia, I make the following
disclosure:

10

I am a Georgia Certified Court Reporter.
I am here as an independent contractor for Esquire
Deposition Solutions.

11

12 Esquire Deposition Solutions was contacted
13 by the offices of Craig A. Webster, PC, to provide
court reporting services for this deposition.
14 Esquire Deposition Solutions will not be taking this
deposition under any contract that is prohibited by
OCGA 15-14-37 (a) and (b).

15

16 Esquire Deposition Solutions has no
17 contract or agreement to provide court reporting
services with any party to the case, any counsel in
the case or any reporter or reporting agency from
whom a referral might have been made to cover this
deposition.

18

19 Esquire Deposition Solutions will charge
20 its usual and customary rates to all parties in the
case, and a financial discount will not be given to
any party in this litigation.

21 *Susan W. Tarpley*

22
23 Susan W. Tarpley, CCR
Georgia CCR B-1489

24

25

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
77

1 DEPOSITION ERRATA SHEET

2

3 Our Assignment No. J5682131

4 Case Caption: McBryer v. Hon. Gene Scarbrough

5

6

7 DECLARATION UNDER PENALTY OF PERJURY

8

9 I declare, under penalty of perjury, that I

10 have read the entire transcript of my deposition

11 taken in the above-captioned matter or the same has

12 been read to me and the same is true and correct,

13 save and except for changes and/or corrections, if

14 any, as indicated by me on the DEPOSITION ERRATA

15 SHEET hereof, with the understanding that I offer

16 these changes as if still under oath.

17 Signed on the ____ day of _____ 2020.

18

19

20

21 _____
22 Maryanne Gaffney-Kraft, DO

23

24

25

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020
78

1 DEPOSITION ERRATA SHEET

2 Page ____ Line ____ should read: _____

3 _____

4 Reason for change: _____

5 Page ____ Line ____ should read: _____

6 _____

7 Reason for change: _____

8 Page ____ Line ____ should read: _____

9 _____

10 Reason for change: _____

11 Page ____ Line ____ should read: _____

12 _____

13 Reason for change: _____

14 Page ____ Line ____ should read: _____

15 _____

16 Reason for change: _____

17 Page ____ Line ____ should read: _____

18 _____

19 Reason for change: _____

20 Page ____ Line ____ should read: _____

21 _____

22 Reason for change: _____

24 SIGNATURE: _____ DATE: _____

25 SUSAN W. TARPLEY, CCR, B-1489

MARYANNE GAFFNEY-KRAFT, D.O.
MCBRYER vs HON. GENE SCARBROUGH

July 15, 2020

79

1 DEPOSITION ERRATA SHEET

2 Page ____ Line ____ should read: _____

3 _____

4 Reason for change: _____

5 Page ____ Line ____ should read: _____

6 _____

7 Reason for change: _____

8 Page ____ Line ____ should read: _____

9 _____

10 Reason for change: _____

11 Page ____ Line ____ should read: _____

12 _____

13 Reason for change: _____

14 Page ____ Line ____ should read: _____

15 _____

16 Reason for change: _____

17 Page ____ Line ____ should read: _____

18 _____

19 Reason for change: _____

20 Page ____ Line ____ should read: _____

21 _____

22 Reason for change: _____

24 SIGNATURE: _____ DATE: _____

25 SUSAN W. TARPLEY, CCR, B-1489